

REMARKS

This application has been reviewed in light of the Office Action dated December 24, 2008. Claims 1, 3-5, 8-10, 13-15, 17-19, and 21-23 are presented for examination, of which Claims 1, and 8-10 are in independent form. Claims 1, and 8-10 have been amended to define Applicants' invention more clearly. Favorable reconsideration is requested.

The Office Action states that Claims 1-5, 8-10 and 12-23 are rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 5,963,916 (*Kaplan*) in view of U.S. Patent No. 7,324,953 (*Murphy*). Applicants submit that independent Claims 1, and 8-10, together with the claims dependent thereon, are patentably distinct from the cited prior art for at least the following reasons.

One notable feature of the independent Claims is "receiving a search query defining a plurality of music search parameters including one attribute corresponding to a genre and at least one attribute corresponding to" "an emotional quality" (Claim 1), "a situational quality" (Claim 8), "a sound quality" (Claim 9), and "a vocal quality" (Claim 10). This feature further clarifies that "attributes" such as "emotional quality", "situational quality", "sound quality" and "vocal quality" are distinct from well known "genre" attributes.

Another notable feature of the independent Claims is “searching for music samples based upon at least one similarity between the attribute corresponding to the genre and at least one feature vector assigned to the one or more music samples, and the at least one attribute corresponding to” “the emotional quality” (Claim 1), “the situational quality” (Claim 8) , “the sound quality” (Claim 9, and “the vocal quality” (Claim 10) “and at least one feature vector assigned to the one or more music samples.” By virtue of this feature the returned music samples are not required to have each attribute of the search query. Instead, a user can combine several attributes (*e.g.*, genre “rock” and emotional quality “mellow”, “sad”, etc.). In contrast to the *Kaplan* system, which at best can only search by combinations of genre (*e.g.*, “Classical”) and factual information (*e.g.*, by “Conductor”), the features of the amended independent claims can return broader results based on a query because each “similarity” need not be an identical match.

Nothing has been found in *Kaplan* that is believed to teach or suggest the “receiving” and “searching” features of the amended independent claims. Nor has anything been found in *Murphy* that, in Applicants' opinion, would remedy the deficiencies of *Kaplan*.

Accordingly, Claims 1, 8, 9, and 10 are believed to be patentable over *Kaplan* and respectfully request withdrawal of the rejection under Section 103(a) .

The other rejected claims in this application depend from one or another of the independent claims discussed above and, therefore, are submitted to be patentable for at least the same reasons. Since each dependent claim is also deemed to define an additional aspect of the invention, individual reconsideration of the patentability of each claim on its own merits is respectfully requested.

In view of the foregoing amendments and remarks, Applicants respectfully request favorable reconsideration and early passage to issue of the present application.

Applicants' undersigned attorney may be reached in our New York office by telephone at (212) 218-2100. All correspondence should continue to be directed to our below listed address.

Respectfully submitted,

/Jonathan Berschadsky/
Jonathan Berschadsky
Attorney for Applicants
Registration No. 46,551

FITZPATRICK, CELLA, HARPER & SCINTO
30 Rockefeller Plaza
New York, New York 10112-3801
Facsimile: (212) 218-2200
FCHS_WS 2751101v1